

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

U.S. DISTRICT COURT
DISTRICT OF NEW JERSEY
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IN RE:

Ariel Barel

Debtor,

Ariel Barel, sui juris
Complainant

v.

FEDERAL NATIONAL MORTGAGE
ASSOCIATION a/k/a/ FANNIE MAE or
FNMA;
Defendant

Case Number 2:20-cv-00501 (ES)

Chapter 7

Adversary Complaint 19-02137

Bankruptcy Case No: 19-11416 (JKS)

JEANNE A. NAUGHTON, CLERK
FILED
JUL 21 2019
U.S. BANKRUPTCY COURT
NEWARK, N.J.
BY  DEPUTY

APPELLANT'S STATEMENT OF ISSUES
AND
DESIGNATION OF RECORD ON APPEAL

BACKGROUND

1. On January 23, 2019 ("Petition Date"), at or about 2:45 pm, Barel filed a Chapter 7 proceeding in the United States Bankruptcy Court, for the District of New Jersey.
2. *Eight days later* on January 31, 2019, Fannie Mae filed an "In Rem" motion for relief from the automatic stay for real property claiming to be "Secured Creditor" basing its motion on the sale of the property valued at \$435,000 for \$100.00 at the sheriff's sale and on 11 U.S.C. 362(d)(4) claiming that Barel is frequent bankruptcy filer. Prior to January 23, 2019, Bankruptcy petition, Barel last bankruptcy filing was in the year 2000.
3. On April 2, 2019, Barel has filed an objection to Fannie Mae motion for the lift of automatic stay (Bankr. Doc. 27) the objection contained the as Annex A the Second Amended Complaint filed in the Federal Court as Related Case, which was also filed as Bankr. Doc 21.

4. Fannie Mae never filed any reply to any argument Barel raised in his objection.
5. The hearing for the motion for relief from the automatic stay was scheduled for April 9, 2019, at which time the court heard oral arguments on the motion to lift the Automatic Stay. To the court's total surprise Fannie Mae's and its counsel failed to show up at the hearing for its own motion. The counsel was present in the courtroom that morning but left after checking the schedule. The court made an earnest effort to locate the counsel for Fannie Mae, however, he was not to be found. The court concluded that maybe Fannie Mae's counsel abandoned the case, Barel has agreed with the court that perhaps due to the seriousness of the criminal complaint filed with the U.S. Attorney's office against the law firm representing Fannie Mae and other's it would be logical to reach such conclusion. (Bankr. Docket No. 31)
6. April 9, 2019, Bankruptcy Docket Entry indicates as follows:

"Minute of Hearing Held, OUTCOME: Motion Granted. Stay relief is granted for the limited basis to allow the appeal pending in the New Jersey appellant division to proceed. No appearance by counsel for the bank.
(related document(s): 12 Motion for Relief From Stay filed by FEDERAL NATIONAL MORTGAGE ASSOCIATION) (mg) (Entered: 04/09/2019)"
7. The court granted Barel's request to lift the Automatic Stay only on a limited basis strictly for the purpose for the state court to conclude Barel's appeal. Fannie Mae did not object to the order. (Bankr. Docket No. 31)
8. On May 14, 2019, the court heard oral arguments on the Notice of Proposed Abandonment of the Real property. The court overruled Barel's objection and on May 22, 2019, the court entered an order approving Trustee's abandonment of the Real Property.
9. On April 18, 2019, the Bankruptcy Court entered an Order discharging the Debtor. (Bankr. Doc. 33)
10. On May 22, 2019, the same day when this Court entered the order approving Trustee's abandonment of the Real property (Bankr. Doc 38), Phelan Hallinan Diamond & Jones PC. filed

new Writ of Possession in a state court. The Notice of Eviction (Notice 2) was served upon Barel on or about July 6, 2019, demanding the surrender of the property on July 31, 2019.

11. On June 6, 2019, Barel has filed a motion (Bankr. Doc. 42) for An Injunction or An Order To Enforce The Automatic Stay.

12. On July 9, 2019, Ditech Financial LLC and NOT Fannie Mae has filed an objection to the motion. (Bankr. Doc. 45)

13. On July 9, 2019, Barel has filed Reply to the objection. (Bankr. Doc. 46)

14. The hearing was held on July 16, 2019, at which time Nicholas V. Rogers from Phelan law firm entered an appearance on behalf Ditech. Barel has objected to Ditech's appearance in the case being itself in Bankruptcy and having no interest in the property after assigning the so-called "winning bid" over to Fannie Mae and over Barel's objection Judge Sherwood allowed Ditech to proceed.

15. The Bankruptcy Court did not make any decision on July 16, 2019, and rescheduled the hearing for July 30, 2019, allowing counsel for Ditech to revive the motion for Automatic Stay, after the Debtor was discharged on April 18, 2019, which was filed by Fannie Mae on January 31, 2019, (Bankr. Doc 12) the same motion that was already decided and the one that Fannie Mae failed to show up or oppose.

16. On July 30, 2019, Bankruptcy court has denied Barel's Motion for An Injunction or An Order To Enforce The Automatic Stay and granted Fannie Mae January 31, 2019 motion. The counsel for Ditech, after Barel questioned who he represents stated that he now represents Fannie Mae, despite the fact that his filing clearly states that he represents Ditech.

17. On September 12, 2019, Barel filed Adversary proceeding pursuant to violation of 11 USC 362(a), Automatic Stay.

18. On October 16, 2019, Fannie Mae filed Motion to Dismiss the Adversary Complaint (Doc 4)
19. After couple of extensions of time on December 27, 2019, Barel filed Opposition to the motion to dismiss. (Doc 6)
20. On January 7, 2020, the court held a hearing and dismissed the Adversary Complaint.

STATEMENT OF ISSUES ON APPEAL

21. Barel's appeal seeks to address the following issues:

- I. Did the Bankruptcy Court erred and/or abused its discretion when it granted, Fannie Mae's motion to dismiss the Adversary Complaint pursuant F.R.C.P. 12(b)(1) and 12(b)(6) on January 7, 2020.

DESIGNATION OF RECORD ON APPEAL

22. The following tables shall constitute the Appellant's designation of record on appeal:

Main Case	Docket	
1	1	Adversary Complaint
2	4	Motion to Dismiss the Adversary Complaint
3	6	Opposition to the Motion to Dismiss
4	7	Declaration of Ariel Barel
5	8	Notice of Appeal
6	10	Transmittal of Record on Appeal to District Court
7		Transcript of a hearing dated 1/7/2020, Motion to Dismiss

By: A. Barel
Ariel Barel
114 Warbler Drive
Wayne, New Jersey
973-460-4444